

EXHIBIT 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE LAUREL BEELER

BEFORE THE HONORABLE CHARLES R. BREYER

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	No. CR 18-0577 (LB) CRB
)	
MICHAEL RICHARD LYNCH,)	
)	San Francisco, California
Defendant.)	Thursday
)	May 11, 2023
)	4:00 p.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Official Reporter - US District Court
Computerized Transcription By Eclipse

Debra L. Pas, CSR, RPR, RMR, CRR
Official Reporter - U.S. District Court - San Francisco, California

Thursday - May 11, 2023

4:08 p.m.

P R O C E E D I N G S

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(Defendant present, in custody.)

THE CLERK: Calling Criminal Action CR18-0577, USA
versus Michael Richard Lynch.

Counsel, please step forward and state your appearances
for the record.

MR. LEACH: Good afternoon, Your Honor. Robert Leach
on behalf of the United States.

I'm here with my colleague Adam Reeves.

JUDGE BEELER: Good afternoon.

MR. MORVILLO: Good afternoon, Your Honor.
Christopher Morvillo for Michael Lynch, and Jonathan Bauman
from Steptoe and Johnson.

Michael Lynch is present.

JUDGE BEELER: All right. Good afternoon.

PRETRIAL SERVICES OFFICER: Good afternoon, Your
Honor. Pepper Friesen for Pretrial Services.

JUDGE BEELER: Okay. As you all know, I'm going to do
the initial appearance, and then Judge Breyer is going to
handle the detention, the bail part it.

And so we -- at an initial appearance what we do is go
through what the charges are, tell you what the penalties are,
advise you of your important constitutional rights. We set --

1 ordinarily we set the next dates, but because we'll -- I'll
2 declare the Court briefly in recess for Judge Breyer to come
3 out, he'll come out. I'll hang out over there. Then we'll
4 figure out what the next dates look like, especially if there
5 are any next dates before me.

6 I'm on criminal duty, just -- you probably know this, but
7 I'm on criminal duty this month and it's the function of the
8 magistrate judge on criminal duty to do the initial appearance,
9 and so that's why I'm here.

10 Okay. So you're here today because you have been charged
11 by the Government with felony counts relating to fraud. We
12 begin with advising you of your important constitutional
13 rights.

14 You have the right to an attorney in your case. You're
15 entitled to consult with and be represented by an attorney at
16 all stages of your case, in court and out of court, including
17 during any questioning by the Government.

18 If someone can afford to hire a lawyer, they may hire a
19 lawyer of their own choosing, as I understand that you've done.
20 If someone can't afford to hire a lawyer, the Court appoints
21 one at no cost.

22 Do you understand your right to an attorney?

23 **THE DEFENDANT:** Yes, I do.

24 **JUDGE BEELER:** And I understand you are entering
25 general appearances in the case.

1 **MR. MORVILLO:** Yes, Your Honor.

2 **JUDGE BEELER:** You also have the right to remain
3 silent. You don't have to talk to the Government about your
4 case.

5 If you've talked to the Government already, you don't have
6 to say anything else. If you start to make a statement, you
7 can stop at any time.

8 If you decide that you do want to talk to the Government
9 about your case, you're entitled to talk to your lawyers first
10 and have your lawyers with you.

11 If you talk to the Government about your case, your
12 statements may be used against you. That's your right to
13 remain silent.

14 Do you understand that right?

15 **THE DEFENDANT:** Yes, I do.

16 **JUDGE BEELER:** I will remind the Government pursuant
17 to the Due Process Protection Act of its obligations under
18 *Brady versus Maryland* and its progeny to disclose material that
19 is favorable to the Defendant and material either to the
20 Defendant's guilt or punishment. The failure to do so in a
21 timely matter may result in dismissal of the indictment or
22 information, dismissal of individual charges, exclusion of
23 Government evidence or witnesses, or any other remedy that is
24 just under the circumstances.

25 All right. So next part of it I will tell you what the

1 charges are, the penalties, and then we'll enter a not guilty
2 plea as to each count. That's called arraignment.

3 You have been charged by a Grand Jury in the Northern
4 District of California with the following counts.

5 Count One, conspiracy to commit wire fraud.

6 In Counts Two through Fifteen with individual counts of
7 wire fraud.

8 In Count Sixteen with securities fraud.

9 Count Seventeen with conspiracy.

10 Just a sec.

11 (Brief pause.)

12 There's also a forfeiture allegation, which means that if
13 someone obtains money from their crimes, the Government can
14 take that money and proceeds derived from it and traceable to
15 it.

16 The penalties, I'm not saying this is what you'll get.
17 This is the maximum under the statute. It turns on many
18 different things, but the maximum penalties for the fraud based
19 Counts One through Fifteen are up to 20 years in prison; a
20 \$250,000 fine or twice the gross gain or loss, whichever is
21 greater; a three-year term of supervised release, which is like
22 a period of probation after any custody period; \$100 special
23 assessment fee; restitution as implicated by the counts; and
24 there's also the forfeiture allegation that I mentioned.

25 Count Sixteen carries the same \$250,000 fine; three years

1 of supervised release; \$100 special assessment; and the other
2 consequences of restitution that I mentioned; and up to 25
3 years in prison.

4 Count Seventeen carries a maximum term of up to five years
5 in prison; \$250,000 fine; three years of supervised release; a
6 \$100 special assessment; and also restitution as implicated in
7 that count.

8 Do you understand generally what the charges are and what
9 the penalties might be?

10 **THE DEFENDANT:** Yes.

11 **JUDGE BEELER:** Counsel, do you waive a detailed
12 reading of the indictment?

13 Are you prepared to enter not guilty pleas as to each
14 count of the indictment and to deny the forfeiture allegation?

15 **MR. MORVILLO:** Yes, Your Honor. We waive a public
16 reading of the indictment and are prepared to enter a not
17 guilty plea.

18 **JUDGE BEELER:** All right. Not guilty pleas will be
19 entered as to each count. The forfeiture allegation is denied.
20 The minute entry will reflect those things and that you have
21 been arraigned.

22 With that, the Court -- yes, Mr. Leach.

23 **MR. LEACH:** Your Honor, if I may.

24 There's one other matter I think the Defendant should be
25 advised of because he's a citizen of the United Kingdom.

1 **JUDGE BEELER:** The consular notification; right?

2 **MR. LEACH:** Yeah. I'm prepared to do it.

3 **JUDGE BEELER:** That's fine. You can do that. Thank
4 you for reminding me. I knew that, and I forgot it.

5 **MR. LEACH:** I made a note, which is why I -- and my
6 agent has already provided this notice.

7 But a defendant who is not a United States citizen may
8 request an attorney for the Government or a federal law
9 enforcement official notify a consular officer from the
10 defendant's country of nationality that the defendant has been
11 arrested; but that even without the defendant's request, a
12 treaty or other international agreement may require consular
13 notification.

14 **JUDGE BEELER:** All right. Thanks.

15 You know, one of the things, I know it's in the rule, I've
16 actually taken the position that with the agent notification is
17 sufficient. And I think it is as a matter of law, but it's
18 fine to make the extra record. And so that's why generally it
19 hasn't been my practice to do it, but there's nothing wrong
20 with being careful.

21 Okay. With that, I think that's the arraignment.

22 As I said, the court will briefly be in recess until Judge
23 Breyer joins us, unless there's anything else procedural from
24 your side of things.

25 I'll stay here just in case there are other court

1 appearances that affect me so I know what's happening. Okay.

2 **MR. LEACH:** Thank you, Your Honor.

3 **MR. REEVES:** Thank you, Your Honor.

4 **JUDGE BEELER:** Court is in recess.

5 (Whereupon there was a recess in the proceedings
6 from 4:14 p.m. until 4:20 p.m.)

7 **THE CLERK:** All rise. Honorable Judge Breyer
8 presiding.

9 Calling Criminal Action CR 18-0577, United States of
10 America versus Michael Richard Lynch.

11 Counsel for Judge Breyer, can you please state your
12 appearances.

13 **MR. LEACH:** Good afternoon, Your Honor. Robert Leach
14 on behalf of the United States.

15 I'm here with my colleague Adam Reeves.

16 **JUDGE BREYER:** Good afternoon.

17 **MR. REEVES:** Good afternoon.

18 **MR. MORVILLO:** Good afternoon, Your Honor.
19 Christopher Morvillo for Michael Lynch, who is present in the
20 courtroom, from Clifford Chance.

21 And with me is Jonathan Bauman from Steptoe and Johnson.

22 **JUDGE BREYER:** Hi. How are you. Nice to see you
23 again.

24 **MR. MORVILLO:** Nice to see you, too, Judge.

25 **JUDGE BREYER:** And the Defendant is present.

1 **MR. MORVILLO:** Yes.

2 **JUDGE BREYER:** In the custody of the United States
3 Marshal; is that correct?

4 **MR. MORVILLO:** That's correct, Your Honor.

5 **JUDGE BREYER:** So the Defendant has been arraigned,
6 and I have been advised that it's appropriate have a detention
7 hearing, obviously.

8 The question is, we could have one now, because I think as
9 a matter of right, the parties are entitled to a detention
10 hearing at the first appearance of the Defendant, which this
11 is, or I can continue it until tomorrow morning at 9:00.

12 Is there a -- is there a preference from the Defendant in
13 that regard?

14 **MR. MORVILLO:** We would prefer to go forward tonight,
15 if that's okay with Your Honor.

16 **JUDGE BREYER:** Yes, of course it is. Yeah. And so
17 that's what I will do.

18 The reason I am holding the detention hearing rather than
19 a magistrate judge is because the Court is familiar with a
20 number of the issues dealing with the appearance of the
21 Defendant.

22 As you know, a number of years ago -- I think I even have
23 a copy of the order -- the Court signed an order in this matter
24 at the request of the Government in 2020 assuring the parties
25 that the Court would determine what are reasonable conditions

1 of release in a pretrial detention setting. That order, of
2 course, was executed at the time, I think, of the COVID
3 pandemic. Nevertheless, the Court feels bound.

4 In any event, the Court would do what the Court always
5 does, which is determine whether or not in the first instance
6 the Defendant either, or both, is a risk of danger to the
7 community or presents a serious risk of flight. That's the
8 determination under the Bail Reform Act.

9 The reason I am doing that is because, number one, I was
10 involved in -- to some extent, in the extradition proceedings,
11 a very limited extent.

12 Number two, the Court has already conducted a trial of
13 a -- of an individual in connection with the subject matter to
14 which the Defendant is presently accused of.

15 And, number three, the Court has from time to time called
16 this case in which the co-defendant, Mr. Chamberlain, has
17 appeared and counsel for -- for the Defendant has also
18 appeared. Mr. Weingarten, in particular.

19 I don't know, Mr. Morvillo, whether you were here or not,
20 but I think at one time you were.

21 **MR. MORVILLO:** I have been here several times, Your
22 Honor, yes.

23 **JUDGE BREYER:** Yes. All right. And I'm sorry that I
24 don't --

25 **MR. MORVILLO:** That's perfectly fine.

1 **JUDGE BREYER:** I mean, it's not that you haven't made
2 an impression on me, but, in fact, actually, you haven't
3 because I don't think I entertained any discussion concerning
4 the matter.

5 But it was to apprise the Court in connection with the --
6 basically with the co-defendant to determine whether or not
7 there would be a single trial or not and when to proceed to
8 trial.

9 So I have become somewhat familiar with it. I think more
10 so than any magistrate judge granting -- appearing sort of
11 *de novo* would know about it. And so the Court has determined
12 that it will hold a detention hearing, which I'm prepared to do
13 at this time.

14 So I have -- I am aware that the Government has submitted
15 a proposed set of conditions. I don't know whether it was
16 jointly agreed upon or not, but I have a proposed set of
17 conditions. They are directed, I would say almost exclusively
18 to the issue of -- of appearance; that is, of risk of flight.

19 They do not address the issue of dangerousness to the
20 community. I have no information that the Defendant is at all
21 a risk of danger to the community and none has been presented
22 to me or suggested to me, nor do I think I need to make any
23 further inquiry.

24 I simply accept the fact that as to that prong of the Bail
25 Reform Act, it has been satisfied; that he does not present a

1 risk of danger to the community.

2 Now, I want to inquire into a number of factors that I
3 think are relevant to the question of whether he presents a
4 serious risk of flight.

5 Let me just go through them and, Mr. Morvillo -- or the
6 Defendant obviously is free to speak, but I think he would
7 probably prefer speaking through you; but if he doesn't, then
8 he should let me know.

9 But I want to inquire into a number of areas, see if you
10 can answer the question. If you can't, you can certainly
11 consult with your client, if that would be helpful.

12 **MR. MORVILLO:** Of course, Your Honor.

13 **JUDGE BREYER:** First, I understand -- I believe that
14 the Defendant is not a citizen of the United States; is that
15 correct?

16 **MR. MORVILLO:** That is correct. He is a citizen of
17 the United Kingdom.

18 **JUDGE BREYER:** Okay. I believe that no member of his
19 family is a citizen -- presently a citizen of the United
20 States; is that correct?

21 **MR. MORVILLO:** I believe that is also correct. His
22 wife was at one point, but is no longer.

23 **JUDGE BREYER:** All right. I believe he's not a
24 resident of the United States; is that correct?

25 **MR. MORVILLO:** That is correct, Your Honor.

1 **JUDGE BREYER:** I also have no indication that he has
2 any real property located in the United States; is that
3 correct?

4 **MR. MORVILLO:** That is correct, Your Honor.

5 **JUDGE BREYER:** Okay. I also understand that he
6 resides abroad, is that true; that he's not in the United
7 States?

8 **MR. MORVILLO:** His residence is in the United Kingdom.

9 **JUDGE BREYER:** Okay. Now, I'd like to know in the
10 past four years has he come to the United States?

11 **MR. MORVILLO:** No. He has been under bail conditions
12 in the United Kingdom, Your Honor, in connection with the
13 extradition.

14 **JUDGE BREYER:** And the bail conditions have not
15 permitted him to travel?

16 **MR. MORVILLO:** Correct. He surrendered his travel
17 documents there. He was subject to a bond, secured bond, and
18 weekly reporting to the police, which he complied with without
19 failure.

20 **JUDGE BREYER:** All right. So in terms of any ties to
21 the Northern District of California or the United States of
22 America, there are none, are there?

23 **MR. MORVILLO:** Familial ties or no property ties, no;
24 but certainly he has --

25 **JUDGE BREYER:** Sorry. What ties would you identify as

1 ties to the United States or to the Northern District?

2 **MR. MORVILLO:** He has acquaintances who live here,
3 friends who live here, Your Honor.

4 **JUDGE BREYER:** He knows people here.

5 **MR. MORVILLO:** Yes.

6 **JUDGE BREYER:** Okay. Other than that, are there any
7 other ties?

8 **MR. MORVILLO:** Not that I'm aware of.

9 **JUDGE BREYER:** Okay. Now, I want to inquire into his
10 financial situation. Can you give me an estimate as to what
11 his net worth is?

12 **MR. MORVILLO:** I can. I will preface it by saying
13 many of his assets are encumbered as a result of this matter,
14 but his approximate net worth is in the range of 400 to
15 \$450 million.

16 **JUDGE BREYER:** Okay. And I note -- as to the assets,
17 the assets reflecting his net worth, where are they located?

18 **MR. MORVILLO:** For the most part they are located in
19 the United Kingdom, but in addition, there are some accounts in
20 Switzerland from what I understand.

21 **JUDGE BREYER:** Are there any in the United States?

22 **MR. MORVILLO:** Not at the moment.

23 **JUDGE BREYER:** Okay. In terms of controlling the
24 assets, does he have exclusive control over those assets?

25 **MR. MORVILLO:** I --

1 **JUDGE BREYER:** Well, first of all, does he have
2 control over the assets? And then I would ask the question:
3 Is that control exclusive?

4 **MR. MORVILLO:** That's a complicated question to
5 answer, Your Honor.

6 **JUDGE BREYER:** Let's hear the first one.

7 **MR. MORVILLO:** He has title to the assets, I would
8 say, but he does not have the ability to move the assets given
9 certain restrictions that have been imposed on him by his
10 financial and banking institutions.

11 In addition, he is under an agreement with Hewlett Packard
12 in connection with the civil case that restricts his ability
13 to -- to access and move money.

14 **JUDGE BREYER:** Well, the proposal that I received was
15 that he was to sign a personal recognizance bond of
16 \$100 million.

17 **MR. MORVILLO:** That's correct.

18 **JUDGE BREYER:** Which would represent approximately, of
19 an estimate, one quarter of his net worth.

20 **MR. MORVILLO:** That's correct.

21 **JUDGE BREYER:** All right. But are those assets, the
22 \$100 million, are they encumbered?

23 **MR. MORVILLO:** So the assets that are reflected in --
24 for purposes of security, Your Honor, constitute
25 10 million pounds, or approximately \$12.5 million. That is

1 currently posted with the UK court that's overseeing the
2 extradition; that, now that he has been extradited, will be
3 returned to him through my firm and will be available to be
4 posted as security here.

5 In addition to that, he holds share certificates in a
6 public company listed in the UK, but traded -- and traded in
7 the UK publicly that he is prepared to post that are not
8 encumbered.

9 JUDGE BREYER: And that's the stock in --

10 MR. MORVILLO: Dark Trace.

11 JUDGE BREYER: And that's publicly traded?

12 MR. MORVILLO: Yes, it is, Your Honor.

13 JUDGE BREYER: And it's not otherwise encumbered.

14 MR. MORVILLO: Correct.

15 JUDGE BREYER: And he has control over those.

16 MR. MORVILLO: He has control over those share
17 certificates, yes.

18 JUDGE BREYER: And that -- and that --

19 MR. MORVILLO: If I might, Your Honor.

20 JUDGE BREYER: Go ahead.

21 MR. MORVILLO: I'm sorry. I didn't mean to interrupt.

22 My firm in London has taken custody of those share
23 certificates today, and we have them in our possession and can
24 deliver them to the registry of the court.

25 JUDGE BREYER: What is the value of his holdings as

1 reflected in share certificates?

2 **MR. MORVILLO:** So some of the share certificates are
3 his wife's and some of them are his. In total, with today's
4 market price, they are approximately \$93 million.

5 **JUDGE BREYER:** Okay. All right.

6 Now, the Defendant was subject to extradition proceedings,
7 obviously. That's a matter of record. And my understanding is
8 that he contested extradition in the United Kingdom. That is
9 to say, he contested the extradition to the United States and
10 those extradition proceedings occurred in the United Kingdom;
11 is that right?

12 **MR. MORVILLO:** Yes. We prefer to say that he asserted
13 his rights under the treaty in the United Kingdom; but, yes,
14 effectively he contested extradition.

15 **JUDGE BREYER:** Well, he's not here voluntarily.

16 **MR. MORVILLO:** That is correct. He's been extradited.

17 **JUDGE BREYER:** He's been extradited.

18 And he's been extradited after a lengthy proceeding in --
19 well, I'll define what is meant by "lengthy." It means
20 different things.

21 But my understanding is that these proceedings of
22 contesting the extradition were at least three years in
23 duration.

24 **MR. MORVILLO:** I think that's -- I think that's right,
25 Your Honor, yes.

1 **JUDGE BREYER:** And they involved a number of appeals
2 from adverse rulings on extradition; is that correct?

3 **MR. MORVILLO:** Just one appeal, Your Honor.

4 **JUDGE BREYER:** One appeal. Several parts?

5 **MR. MORVILLO:** No. I think there was -- there was one
6 extradition decision. There was some litigation relating to
7 that decision, and then there was an appeal. So one appeal.
8 That was just decided three weeks ago.

9 **JUDGE BREYER:** Right. I thought that there was some
10 question that the Home Secretary himself had to -- or Home
11 Secretary Office had to either agree to the extradition or not.
12 And then after that decision, in which the Home Secretary
13 agreed to the extradition, it then -- it then went to a court;
14 is that correct?

15 **MR. MORVILLO:** So the process, as I understand it,
16 Your Honor, is that he was initially arrested on the
17 extradition request. It was -- the Home Secretary of the
18 United Kingdom authorized that arrest. It went to Westminster
19 Magistrate Court for extradition proceedings in the trial
20 court. Those proceedings happened in 2021 -- 2020 through
21 2021.

22 There was some litigation over what happened as a result
23 of the decision there and whether that was self-executing or
24 whether the Home Secretary had to take further action. That
25 was resolved.

1 Home Secretary ordered the extradition. That triggered
2 his right to appeal, which he then pursued. And that decision
3 was handed down about three weeks ago.

4 **JUDGE BREYER:** Adverse to your client's interest.

5 **MR. MORVILLO:** Correct.

6 **JUDGE BREYER:** I also understand that there was some
7 litigation in the United Kingdom involving essentially the same
8 subject matter that's the subject of this indictment.

9 **MR. MORVILLO:** There was a -- a civil trial --

10 **JUDGE BREYER:** Civil.

11 **MR. MORVILLO:** -- in England in 2019.

12 **JUDGE BREYER:** And in preparation of that trial or at
13 some point during the proceedings, was the Defendant given
14 access to the proceedings that occurred here with respect to
15 the trial of Mr. Hussain?

16 **MR. MORVILLO:** I do not believe that the transcripts
17 or the discovery in the Hussain trial was part of the
18 disclosure made by the plaintiffs in the UK case. However,
19 there was significant overlap.

20 **JUDGE BREYER:** Well, of course, the transcripts would
21 be public record.

22 **MR. MORVILLO:** Yes. The transcripts would be public
23 record, yes.

24 **JUDGE BREYER:** And my question is whether or not
25 either counsel for Dr. Lynch had available to him the public

1 record of the proceedings in this Court, in this trial.

2 **MR. MORVILLO:** Yes.

3 **JUDGE BREYER:** Okay. And my understanding,
4 furthermore, is that the Defendant testified for a considerable
5 period of time in that case in the United Kingdom.

6 **MR. MORVILLO:** That is correct, Your Honor.

7 **JUDGE BREYER:** And my further understanding is that
8 the Court in that case found Dr. Lynch to be liable to Hewlett
9 Packard; is that right?

10 **MR. MORVILLO:** On a civil standard of proof, Your
11 Honor, yes.

12 **JUDGE BREYER:** On the civil standard of proof.
13 Notwithstanding -- well, a civil standard of proof.

14 Okay. So he has been found liable by the British court,
15 but no quantifiable -- no number has been assigned by the Court
16 as to what the extent of his liability is with respect to
17 damages.

18 **MR. MORVILLO:** That's correct, Your Honor. You have
19 beat me to the punch on that.

20 The liability phase has concluded. And currently underway
21 is what they call the quantum phase, which is mid litigation
22 right now.

23 **JUDGE BREYER:** All right. Now, the fact that he has
24 no ties to the United States, the fact that he has no ties to
25 the Northern District of California, the fact that he has a net

1 worth of approximately \$400 million, the fact that he has
2 fought extradition for three years, does the Government -- just
3 those facts alone, does the Government believe the Defendant to
4 be a serious risk of flight?

5 **MR. LEACH:** Yes, Your Honor.

6 **JUDGE BREYER:** All right. So the question is -- and I
7 shall so find, that he is a serious risk of flight. And that I
8 think is my first determination under the Bail Reform Act,
9 whether or not he simply could be released without any extra
10 conditions because if he -- if he were not a serious risk of
11 flight, he would -- he would be released. The presumption is
12 that he should be released pretrial.

13 Since he is a serious risk of flight, and the Court so
14 finds, the question is what sort of conditions can be imposed
15 that will ensure his presence and, in particular, what are the
16 least restrictive conditions consistent with the fact that he
17 is, as the Court finds, a serious risk of flight.

18 I believe there are conditions that can ensure, reasonably
19 ensure, his security. But I have received this afternoon, just
20 before this hearing, a proposed set of conditions that were
21 submitted to me, which I find inadequate. And I wish to
22 discuss with you the additional conditions or the modification
23 of these conditions which would be acceptable to the Court in
24 order for the Defendant to be released.

25 First, I believe that he should be confined to the

1 Northern District of California and not be permitted to travel
2 anywhere outside the district;

3 That he be confined, in fact, or in effect, to home
4 confinement or to a place of abode in which he can leave for
5 the purposes of medical visits, for court appearances, or for
6 meetings with counsel, all of which must occur within the
7 Northern District of California -- pardon me, all of which must
8 occur within the City and County of San Francisco. That's --
9 that's number one.

10 Number two. I believe that his confinement should be
11 monitored by a security firm; that an independent security firm
12 be hired by the Defendant, should he so choose, or of his
13 choice, in which the conditions of the security must be
14 approved by this Court.

15 I believe that he should also execute an agreement that
16 the security firm should be permitted to use reasonable force
17 to ensure the Defendant's compliance with all the terms and
18 conditions of the release. And I believe that some deposit of
19 six months for the services of this security firm should be
20 arranged for and deposited with some third party. I don't know
21 whether it be the Clerk's Office, U.S. Attorney's Office, or
22 the company itself. That's a detail that would have to be
23 worked out.

24 I believe he should post -- he should sign the
25 \$100 million personal recognizance promise secured by

1 \$50 million in cash to be deposited by the Defendant with the
2 Clerk of the Court.

3 At this time I would not accept any securities. However,
4 we can -- I'm amenable to reviewing these securities to
5 determine whether or not they are subject to easy liquidation
6 provided that he does not honor all the terms and conditions of
7 the pretrial release.

8 I would also impose the -- what I call the standard
9 conditions of release, and let me recite what they are.

10 The Defendant must appear at all proceedings as ordered by
11 the Court and must surrender for service of any sentence
12 implicated.

13 Defendant must not commit any federal, state or local
14 crime.

15 Defendant must not harass, threaten, intimidate, injure,
16 tamper with or retaliate against any witness, victim,
17 informant, juror, officer of the court or obstruct any criminal
18 investigation.

19 Defendant must submit to supervision by Pretrial Services
20 and must report immediately upon release and thereafter as
21 directed by Pretrial Services.

22 Defendant must surrender all travel documents of any kind
23 whatsoever, including any document which may be used to enter
24 or exit any country, genuine or not. Defendant shall not apply
25 for or otherwise obtain any new travel documents, genuine or

1 not.

2 Defendant shall be fitted with an electronic monitoring
3 device which cannot be removed. Defendant's private security,
4 Pretrial Services and the FBI shall be given access to
5 Defendant's electronic monitoring data on a real-time basis.

6 Defendant must not change residence or telephone number
7 without the prior approval of Pretrial Services.

8 Defendant must comply with the following location
9 restrictions. Defendant must not travel outside the City and
10 County of San Francisco. Defendant shall remain at his
11 residence at all times except for religious services, any
12 medical, substance abuse or mental health treatment, attorney
13 visits, court appearances, court approved obligations, or other
14 activities approved in advance by the Court.

15 Defendant will give his express consent in writing to
16 temporary preventative detention and the use of reasonable
17 force by his private security to thwart any attempt to flee.

18 I think those are the restrictions. It is my intention,
19 when I retire to Chambers, to write an order setting forth in
20 writing all of these restrictions.

21 And I will -- of course, if any party wishes to seek a
22 modification of the restrictions, they may do so at any time.
23 They may appear tomorrow. If after some reflection and
24 discussion with the -- with the Defendant, you wish to appear
25 in front of me to seek any modification, I will entertain it,

1 but I -- but until then this will be the order of the Court,
2 and I will remand the Defendant to the custody of the United
3 States Marshal.

4 So I will -- I will also set, by the way, a hearing on the
5 trial of this matter for next Friday, a week from tomorrow.
6 Please contact counsel for Mr. Chamberlain. And I want to be
7 prepared -- I want the parties to be prepared to suggest a
8 trial date, and I want to advise the parties that I am ready to
9 try this case as soon as the parties want to try it.

10 I understand there's been an enormous amount of material
11 generated in connection with this case, but as we've discussed,
12 much of this material has been given to the Defendant already,
13 if not all of it. I don't know. I don't know what the -- how
14 the Government has complied with its discovery obligations.

15 I instruct the Government to provide Defense counsel with
16 all discoverable materials prior to next Friday so that -- so
17 that the discussion that we can have will be a meaningful
18 discussion on setting a trial date.

19 Obviously, if the Defendant remains in custody -- and
20 that's going to be his choice -- or even under the release
21 conditions, I would believe that he would want to be tried as
22 quickly as possible and try to resolve this as quickly as
23 possible. And the Court will be ready, and I assure you the
24 Government will as well, to try this case as quickly as Defense
25 counsel wishes to proceed consistent with their obligations to

1 be prepared in order to try the case.

2 So that I think concludes the --

3 **MR. MORVILLO:** Your Honor, may I be heard.

4 **JUDGE BREYER:** Of course. Of course, Mr. Morvillo.
5 You go right ahead.

6 **MR. MORVILLO:** Thank you.

7 While the Court has made clear that it concludes that
8 Mr. Lynch is a flight risk --

9 **JUDGE BREYER:** A serious risk of flight.

10 **MR. MORVILLO:** Serious risk of flight, I understand.

11 **JUDGE BREYER:** Along with the Government.

12 **MR. MORVILLO:** Mr. Lynch has been under bail in
13 England for the last four years. He has been a model bailee
14 there. He has not had remotely close to the circumstances and
15 conditions placed upon him that the Court has just outlined.
16 If he were going to flee, he would have done it then.

17 **JUDGE BREYER:** I don't know whether that's true at
18 all. He had significant ties to the United Kingdom. He lived
19 there. His wife lived there. He had property there. He had
20 employment there. He had a business there. And there -- and
21 there, Mr. Morvillo, not to state the obvious, there was not
22 here.

23 And what he did -- and I don't quarrel with his exercise
24 of his -- of his rights under the extradition treaty, but there
25 is a big difference between people who contest extradition and

1 somebody who simply says: All right. I'm going to come here
2 immediately and adjudicate it. Exactly what Mr. Hussain did.
3 He came here voluntarily and -- you know.

4 So I think that there are a set of conditions that one
5 would set in Great Britain very different from the set of
6 conditions that one would set in the United States.

7 **MR. MORVILLO:** That being said, Your Honor, when the
8 final extradition order came down three weeks ago and this
9 transfer to the United States was a fait de accompli, he still
10 did not have tightened restrictions and, as a result, certainly
11 could have fled. He did not. He is here. He is ready to face
12 the -- the Court here and the charges here.

13 We agree some restrictions are necessary. We've
14 negotiated this package that was presented to you by the
15 Government over the course of the last two weeks. We believe
16 that those are sufficient circumstances to guarantee his return
17 to court here, under circumstances where for the last four
18 years he has been a model bailee in the United Kingdom.

19 Obviously, circumstances are changed. That's why the
20 conditions that we've agreed to here are more severe.

21 So I would -- I would respectfully suggest that the terms
22 that you have just outlined go way beyond what is reasonably
23 necessary to secure the Defendant's appearance here in court
24 under the Bail Reform Act.

25 I will also just add, just to make sure the Court is

1 reminded.

2 **JUDGE BREYER:** Go ahead.

3 **MR. MORVILLO:** When the Court -- at the outset of the
4 hearing the Court indicated that it had previously entered an
5 order assuring that reasonable conditions of release would be
6 available to Dr. Lynch if and when he were extradited.

7 The background of that related not to COVID, but to an
8 argument that was being made in connection with the extradition
9 that pretrial detention of Mr. Lynch, given the serious medical
10 conditions that he faces, would be a violation of his human
11 rights. And to meet that argument, the Government agreed to
12 conditions that it understood would -- would be reasonable to
13 assure Dr. Lynch's appearance in court. It was in that context
14 that they came to the Court to seek the order that the Court
15 entered.

16 Subsequent to that, the Government made representations to
17 the UK Court that he would receive bail when he arrived in the
18 United States, and it was on the basis of those representations
19 that that issue in the extradition was resolved.

20 **JUDGE BREYER:** Were the conditions of release
21 presented to the United Kingdom Court --

22 **MR. MORVILLO:** They were, Your Honor.

23 **JUDGE BREYER:** -- in the extradition proceedings?

24 **MR. MORVILLO:** They were, Your Honor.

25 **MR. LEACH:** Your Honor, if I may --

1 **JUDGE BREYER:** By the way, let me just point out, as
2 you well know, Mr. Morvillo, the -- in the judicial system the
3 Article III Court is entirely an independent body --

4 **MR. MORVILLO:** I am --

5 **JUDGE BREYER:** -- from the Executive Branch of the
6 Government.

7 Now, I did review exactly what I wrote and I will read it.
8 It says:

9 "Good cause appearing therefore, the Court hereby
10 finds that based on the information currently
11 available to the Court and the Government -- whatever
12 information was available as of October 13th, 2020 --
13 in the event of Defendant's extradition to the United
14 States, there are conditions of release that can be
15 imposed pursuant to 18 U.S.C. 3142(c) which will
16 reasonably assure the appearance of the Defendant and
17 the safety of any other person in the community such
18 that pretrial detention shall not be required."

19 And that's what I've done. In the Court's view, I have
20 set forth reasonable conditions that address a serious risk of
21 flight.

22 And to be candid with you, Mr. Morvillo, because that's
23 always a good idea, I don't -- I think it is nearly a certainty
24 that the Defendant will flee, in the Court's view. I think
25 there is nothing to hold him to this Court.

1 And as a -- as the proceedings develop, it will become
2 increasingly clear that -- what the evidence is against the
3 Defendant because he's being furnished the evidence.

4 Now, he has no ties to the United States. He has no ties
5 to this district. He has a vast amount of wealth, which can
6 sustain him should he choose not to remain in the United
7 States.

8 The only thing that faces him here -- that he faces here
9 is the prospect of either an acquittal, which certainly can
10 happen. I'm not passing judgment as to what -- the degree of
11 his culpability. I have no idea. I don't know what the degree
12 of his culpability is.

13 I know that he is accused in the indictment of having
14 taken -- benefited from this transaction \$804 million. And you
15 advise me, and I think I appreciate the candor, that he has a
16 net worth of approximately \$400 million. So there's nothing to
17 keep him here other than his word.

18 And I would say that the Bail Reform Act is quite clear
19 that the Court can impose reasonable restrictions that will
20 ensure his presence. It's an independent duty of this Court,
21 independent of the Government, to arrive at terms and
22 conditions that they believe will ensure the appearance of the
23 Defendant.

24 So whatever happened in Great Britain happened in Great
25 Britain, and I understand it. And I understand the ties that

1 he has to that country. No such ties exist here.

2 So if you'd like, I am -- I will set aside tomorrow
3 morning if you want to come back and address the Court. I
4 don't like cutting lawyers off. And I also believe that this
5 came as a surprise to you. All right?

6 **MR. MORVILLO:** It did, Your Honor.

7 **JUDGE BREYER:** So, and I -- you know, I have been
8 around long enough to know that lawyers don't like surprises.

9 So if you want to think of more things to say to me
10 tomorrow morning at 9:00, I'll hear them. I'll hear them. And
11 I'll give you my opinion tonight so you'll see in writing
12 exactly what I have to say, and you can address that or
13 anything else you want to address.

14 **MR. MORVILLO:** Your Honor, not to belabor the point.

15 **JUDGE BREYER:** Go ahead.

16 **MR. MORVILLO:** The reason why the conditions were
17 agreed to or the Government took the position that it did in
18 the extradition was because of Dr. Lynch's medical condition.

19 **JUDGE BREYER:** Well, I have no information on
20 Dr. Lynch's medical condition. If you want to give that to me,
21 I will be -- I will certainly consider it.

22 I was going to, and I will now, order a pretrial release
23 report. I don't know whether you call it a bail report or
24 whatever they call it. And that's exactly the sort of thing
25 that they take a look at.

1 I want to assure you, given 24, 48, 72 hours, that
2 San Francisco has a perfectly adequate medical -- medical
3 facilities here, including the Zuckerberg Center at San
4 Francisco General Hospital. And you want doctors to see him or
5 anything of that nature, obviously that can be arranged.

6 **MR. MORVILLO:** Your Honor, there are certain medical
7 devices which he traveled with here that he needs to keep him
8 alive.

9 **JUDGE BREYER:** Well --

10 **MR. MORVILLO:** And so the --

11 **JUDGE BREYER:** Well, then I'll have the Marshals
12 transfer him to San Francisco General Hospital. They have a
13 custody wing there. If that's what you want, I'll have him
14 transferred to San Francisco General Hospital forthwith.

15 **MR. MORVILLO:** Your Honor, with respect. We just
16 don't think that it's necessary to detain Dr. Lynch --

17 **JUDGE BREYER:** Well, I do.

18 **MR. MORVILLO:** -- overnight.

19 **JUDGE BREYER:** I understand that. I do. And I'm the
20 judge, and that's my job.

21 My job is to make a determination as to whether or not --
22 how to address the issue of a serious risk of flight. That's
23 my task. That's what Congress said the Court has to do.
24 Obviously, subject to review. And obviously subject to an
25 examination of the reasons why.

1 So you want this on the calendar tomorrow?

2 **MR. MORVILLO:** Well, I --

3 **JUDGE BREYER:** I'm not releasing him tonight. So, I
4 mean, it's -- you're not waiving that argument.

5 **MR. MORVILLO:** Well, Your Honor, I would like to
6 persuade you to release him tonight, but I would like to be
7 back here tomorrow morning, yes.

8 **JUDGE BREYER:** All right. So I'll put it on the
9 calendar for 9:00 a.m. or 9:30? What do you think?

10 **THE CLERK:** 9:00 a.m.

11 **JUDGE BREYER:** 9:00 a.m. tomorrow morning. Marshals
12 are directed to produce the Defendant at that time.

13 I will be here a bit longer if we have to make any
14 arrangements with respect to San Francisco General Hospital.
15 I don't know. Why don't you have a conversation --

16 **MR. MORVILLO:** May I have a conversation with my
17 client, Your Honor?

18 **JUDGE BREYER:** Of course you can.

19 All right. We're in recess. Thank you.

20 (Proceedings adjourned.)
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25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Sunday, May 21, 2023